

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EXXON MOBILE CORPORATION, a New
Jersey corporation,

Plaintiff,

v.

FREEMAN HOLDINGS, LLC, a Kansas
Limited Liability Company;
FREEMAN HOLDINGS OF WASHINGTON,
LLC, a Washington Limited
Liability Company, d/b/a Million
Air-Moses Lake,

Defendants.

NO. CV-09-0390-EFS

**ORDER GRANTING FREEMAN
HOLDINGS' MOTION TO DISMISS
AND GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO AMEND
COMPLAINT**

Before the Court, without oral argument, are Defendant Freeman Holdings, LLC's ("Freeman Holdings") Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction (ECF No. [13](#)) and Plaintiff Exxon Mobile Corp.'s ("Exxon") Motion for Leave to Amend Complaint (ECF No. [33](#)). After reviewing the submitted material and relevant authority, the Court is fully informed. For the reasons set forth below, the Court grants Freeman Holdings' motion to dismiss for lack of personal jurisdiction and grants Exxon leave to amend its complaint.

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1 **A. Background¹**

2 Exxon filed this action on December 29, 2009, alleging that Freeman
3 Holdings and Defendant Freeman Holdings of Washington LLC ("Freeman
4 Washington") wrongfully took Exxon's aviation fuel that was stored at the
5 Grant County International Airport in Moses Lake, Washington. In its
6 complaint, Exxon 1) seeks declaratory relief under 28 U.S.C. § 2201, 2)
7 sues for conversion, 3) alleges a violation of the Washington Consumer
8 Protection Act (WCPA), 4) alleges a violation of RCW 80.28.240, and 5)
9 seeks recovery for Defendants' unjust enrichment.

10 On February 1, 2010, Freeman Holdings sought dismissal because
11 personal jurisdiction is lacking due to Freeman Holdings' insufficient
12 contacts with Washington. On July 30, 2010, the Court took this motion
13 under advisement and allowed Exxon to engage in discovery relating to
14 Freeman Holdings' contacts with Washington; the Court ordered the parties
15 to file supplemental briefs following the allowed discovery.² (ECF No.
16 [24.](#)) On August 4, 2010, a Scheduling Order was entered, setting a
17 December 3, 2010 discovery cutoff and a May 2, 2011 trial. (ECF No. [26.](#))

18 The parties have filed their supplemental briefs relating to Freeman
19 Kansas' motion to dismiss. And on October 1, 2010, Exxon filed its
20 Motion for Leave to Amend Complaint, which seeks to add Francis B.

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23 ¹ The "background" section is based on the Complaint's (ECF No.
24 [1](#)) factual allegations. See *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th
25 Cir. 2003).

26 ² In its Order, the Court also dismissed Exxon's WCPA and RCW
80.04.240 claims.

1 Freeman, Jr. as a Defendant and alter ego allegations. (ECF No. [33](#).)
2 Defendants oppose Exxon's motion to amend.

3 **B. Freeman Holdings' Motion to Dismiss**

4 Freeman Holdings, which is located in Kansas, contends that this
5 Court lacks personal jurisdiction over it because Freeman Holdings has
6 insufficient contacts with Washington.

7 Under Washington's long-arm statute, the Court must have general or
8 specific personal jurisdiction over a defendant. *See Shute v. Carnival*
9 *Cruise Lines*, 897 F.2d 377, 379-80 (9th Cir. 1990), *rev'd on other*
10 *grounds*, 499 U.S. 585 (1991). General jurisdiction exists where the non-
11 resident defendant has "substantial or continuous and systematic contacts
12 with the forum state." *Fields v. Sedgwick Assoc. Risks*, 796 F.2d 299,
13 301 (9th Cir. 1984). Specific jurisdiction exists if: 1) the defendant
14 performed an act by which it purposefully availed itself of the privilege
15 of conducting activities in Washington, 2) the cause of action arose
16 out of the defendant's forum-related activities, and 3) the court's
17 exercise of jurisdiction over the defendant is reasonable. *Shute*, 897
18 F.2d at 381.

19 Exxon contends that specific jurisdiction exists because 1) the
20 December 1, 2008 sublease included a Kansas address for Freeman
21 Washington (the same address as Freeman Holdings' address) (ECF No. [1](#)-2),
22 2) a February 2, 2009 letter to Exxon discussing the fuel dispute at
23 Moses Lake stated that it was from "Freeman Holdings LLC/Million Air
24 Moses Lake" (ECF No. 50-2), and 3) a February 17, 2009 article in TK
25 Magazine, which announced Freeman Washington's acquisition of Air
26 America, referred to "Freeman Holdings" and provided a contact number for

1 an individual, who is a Freeman Holdings' employee in Kansas. The Court
2 disagrees that these documents support a finding that Freeman Holdings
3 has had sufficient contacts with Washington to allow this Court to
4 exercise personal jurisdiction over Freeman Holdings.

5 First, there is no indication that Freeman Holdings played a role
6 in the December 1, 2008 sublease between the Port of Moses Lake and
7 Freeman Washington. Freeman Holdings is mentioned nowhere in the lease.
8 A Kansas address, the same address as Freeman Holdings' address, is used
9 for Freeman Washington's contact address. None of this equates to a
10 finding that Freeman Holdings was involved in the sublease: the sublease
11 is clear that it was Freeman Washington that was the party to the
12 sublease.

13 Second, Exxon has presented no facts to contest Mr. Freeman's
14 deposition testimony that the business name "Freeman Holdings LLC/Million
15 Air Moses Lake" was erroneously used by the preparer of this letter. Mr.
16 Freeman acknowledged that he approved the signature-stamped letter, but
17 testified that the business name "Freeman Holdings LLC/Million Air Moses
18 Lake" was erroneous because there is no business entity with that name.
19 Rather, consistent with the Moses Lake, Washington address, the business
20 title should have been Freeman Washington. Given Mr. Freeman's
21 uncontested testimony, it is clear that the letter expressed Freeman
22 Washington's perspective regarding the fuel dispute and did not involve
23 Freeman Holdings.

24 Third, the TK Magazine article does not identify an act by which
25 Freeman Holdings purposefully availed itself of conducting activities in
26 Washington. The TK Magazine article announces that "Freeman Holdings of
Washington, L.L.C." purchased Air America Fuel & Services in Moses Lake.

1 After utilizing the full title, "Freeman Holdings of Washington, L.L.C.,"
2 the article's author then used a shortened version: "Freeman Holdings."
3 This shortened title refers to the afore-mentioned Freeman Washington,
4 not Freeman Holdings, LLC in Kansas.

5 After reviewing the evidence and arguments presented by Exxon, the
6 Court concludes that Exxon failed to establish that Freeman Holdings
7 performed an act by which it purposefully availed itself of the privilege
8 of conducting activities in Washington. Accordingly, it is unreasonable
9 for the Court to exercise jurisdiction over Freeman Holdings. Freeman
10 Holdings' motion to dismiss is **granted**.

11 **B. Exxon's Motion for Leave to Amend Complaint**

12 Exxon seeks leave to add 1) Francis Freeman individually to all
13 remaining counts and 2) alter ego allegations against Mr. Freeman.
14 Defendants oppose the motion, contending that granting leave to add Mr.
15 Freeman and alter ego allegations is futile, late, prejudicial to
16 Defendants, and involves bad faith by Exxon.

17 Federal Rule of Civil Procedure 15 governs amendment of pleadings.
18 "A party may amend the party's pleading . . . [after a responsive
19 pleading is served] only by leave of court or by written consent of the
20 adverse party; and leave shall be freely given when justice so requires."
21 *Id.* Rule 15 is to be applied with "extreme liberality," *Eminence*
22 *Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003)
23 (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079
24 (9th Cir. 1990)), since the purpose of the pleadings is "to facilitate
25 a proper decision on the merits." *Conley v. Gibson*, 355 U.S. 41, 48
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1 (1957). Formal and burdensome impediments should not be erected during
2 the litigation process. *Id.*

3 In the absence of any apparent or declared reason—such as undue
4 delay, bad faith or dilatory motive on the part of the movant,
5 repeated failure to cure deficiencies by amendments previously
6 allowed, undue prejudice to the opposing party by virtue of
7 allowance of the amendment, futility of amendment, etc.—the
8 leave sought should, as the rules require, be “freely given.”

9 *Foman v. Davis*, 371 U.S. 178, 182 (1962). Not all of the factors merit
10 equal weight. *Eminence Capital, LLC*, 316 F.3d at 1052. In fact,
11 prejudice to the opposing party is given the most consideration, *id.*;
12 while, delay alone is an insufficient reason to deny the motion to amend.
13 *Loehr v. Ventura County Cmty Coll. Dist.*, 743 F.2d 1310, 1319-20 (9th
14 Cir. 1984). “Absent prejudice, or a strong showing of any of the
15 remaining *Foman* factors, there exists a *presumption* under Rule 15(a) in
16 favor of granting leave to amend.” *Eminence Capital, LLC*, 316 F.3d at
17 1052; see *Howey v. United States*, 481 F.2d 1187 (9th Cir. 1973).

18 After considering these factors, the Court grants Exxon leave to
19 amend the complaint to add Mr. Freeman as a Defendant and to assert alter
20 ego allegations. The Court grants leave notwithstanding Exxon's delay
21 in filing this motion and the fact that its late filing may prejudice
22 Exxon by requiring the continuance of the trial to allow Defendants to
23 retain an “alter ego” expert. Exxon was aware of Mr. Freeman's role and
24 involvement in Freeman Washington and the basis for an alter ego theory
25 as early as February 2010. (ECF No. [16](#) at 14-16.) Exxon should not have
26 delayed the filing of this motion; nonetheless, the Court does not find
that the motion is brought in bad faith. And the Court finds that it
should err on the side of allowing Exxon to bring its claims against any

1 potentially liable entity or individual and finds that granting leave to
2 amend is not futile.

3 "Where a private person so dominates and controls a corporation that
4 such corporation is his alter ego, a court is justified in piercing the
5 veil of corporate entity and holding that the corporation and private
6 person are one and the same." *Washington v. Davies*, 176 Wn. 100, 113-14
7 (1934); *Harrison v. Puga*, 4 Wn. App. 52, 62-63 (1971); see also William
8 Fletcher, *The Corporate Entity or Personality, Piercing the Corporate*
9 *Veil: alter ego or mere instrumentality test* in Fletcher Cyclopedic of
10 Law of Corporations § 41.10 (2010). Exxon's factual allegations in the
11 proposed amended complaint are sufficient to allow leave to amend:³ Mr.
12 Freeman 1) is the sole and controlling owner of Freeman Washington, 2)
13 controls and dominates Freeman Washington, 3) establish Freeman
14 Washington, and 4) would have performed Freeman Washington's activities
15 if it was not created. (ECF No. 35-1.)

16 To ensure a resolution on the merits as to all potentially liable
17 Defendants, the Court **grants** leave to amend.

18 **D. Conclusion**

19 For the above-given reasons, **IT IS HEREBY ORDERED:**

20 1. Freeman Holdings' Rule 12(b)(2) Motion to Dismiss for Lack of
21 Personal Jurisdiction (**ECF No. 13**) is **GRANTED**.

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23 ³ When reviewing a complaint for sufficiency, the Court accepts the
24 factual allegations as true and disregards the legal conclusions. *Bell*
25 *Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007); *Ashcroft v. Iqbal*, 129
26 S. Ct. 1937, 1949 (2009).

DATED this 1st day of November 2010.

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